



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

EL  
6/5/01

JUL 05 2001

REPLY TO THE ATTENTION OF  
**SR-6J**

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Stephen Giblin, Esq  
Jones, Day, Reavis & Pogue  
North Point  
901 Lakeside Ave.  
Cleveland, OH 44114

EPA Region 5 Records Ctr.



272625

Re: **SPECIAL NOTICE OF LIABILITY**  
North Bronson Former Facilities Site,  
*Operable Unit No.3, Former Scott Fetzer Facility*  
Spill ID #B5Y1-03

Dear Mr. Giblin:

The United States Environmental Protection Agency (U.S. EPA) has undertaken response actions at the North Bronson Former Facilities Site (Site) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499 (CERCLA). These actions have documented the release or threatened release of hazardous substances, pollutants, and contaminants at the Site.

**Additional Response Actions**

Unless U.S. EPA determines that a Potentially Responsible Party (PRP) will voluntarily undertake the response action necessary at the Site, U.S. EPA may, under Section 104 of CERCLA, undertake the response action itself and, under Section 107 of CERCLA, seek reimbursement from PRPs of all costs incurred in connection with the action taken. Such costs may include, but are not limited to, expenditures for investigation, planning, response and enforcement activities. Moreover, under Section 106 of CERCLA, U.S. EPA may order responsible parties to implement relief actions deemed necessary by U.S. EPA to protect the public health, welfare or environment from an imminent and substantial endangerment because of an actual or threatened release of a hazardous substance from a facility.

In addition to those further response actions enumerated above, U.S. EPA may, pursuant to its authorities under CERCLA and other laws, determine that other clean-up activities are necessary to protect public health, welfare and the environment.

**PRP Determination**

PRPs under Section 107 of CERCLA include current owners and operators of the Site and former owners and operators of the Site at the time of disposal of hazardous substances, as well as persons who owned or possessed hazardous substances and arranged for disposal, treatment, or transportation of such hazardous substances and persons who accepted hazardous substances for transportation for disposal or treatment to a facility selected by such transporter. U.S. EPA has information indicating that you are a PRP with respect to the Site. By this letter, U.S. EPA notifies you of your potential liability with regard to this matter and encourages you, as a PRP, to voluntarily perform or finance the response activities that the U.S. EPA has determined or will determine are required at the Site.

**Special Notice and Negotiation**

Pursuant to Section 122(e)(1) of CERCLA, U.S. EPA has determined that a period of negotiation may facilitate an agreement between the North Bronson Former Facilities Site PRPs and U.S. EPA for implementation or financing of the response action. Accordingly, U.S. EPA is contacting PRPs identified for the North Bronson Former Facilities Site to resolve their liability with respect to the Site. To assist the PRPs in negotiating with U.S. EPA concerning this matter, attached to this letter is a list of the names and addresses of other PRPs to whom this notification is being sent. It should be noted that inclusion on or exclusion from this list does not constitute a final determination by U.S. EPA concerning the liability of any party for remediation of the Site or for payment of past costs.

Upon your receipt of this Special Notice, you will have a maximum of 60 days to coordinate with any PRPs and to present to U.S. EPA a "good faith offer" to negotiate the terms of an Administrative Order on Consent (AOC). In accordance with the requirements of Section 122(e)(2), during this 60-day moratorium, U.S. EPA will not commence remedial action at the Site. U.S. EPA may, however, commence any additional studies or investigations authorized under Section 104(b), and take any action at the Site should a significant threat to human health or the environment arise during the negotiation period.

**Good Faith Offer**

A "good faith offer" as referenced above shall include the following:

- \* a statement of the PRPs' willingness to conduct or finance a Remedial Investigation/Feasibility Study (RI/FS) and Risk Assessment which are consistent with the proposed AOC and Statement of Work (SOW) and which provides a sufficient basis for a Record of Decision and further negotiations in light of U.S. EPA's SOW;
- \* a detailed response to, and detailed comments, if any, on, the attached proposed AOC and SOW. If your offer contemplates modifications to the AOC or SOW, please make

revisions or edits to the enclosed draft and submit a version to U.S. EPA showing any such modifications. Your response should provide reasons for or the basis of major revisions to the attached proposal.

- \* a demonstration of the PRPs' technical capability to undertake the RI/FS and Risk Assessment. This includes that the PRPs identify the firm expected to conduct the work, or that the PRPs identify the process they will undertake to select a firm;
- \* a demonstration of the PRPs' capability to finance the RI/FS and Risk Assessment;
- \* a statement of the PRPs' willingness to reimburse U.S. EPA for oversight costs; and
- \* the name, address, and phone number of the party or steering committee who will represent the PRPs in negotiations.

If U.S. EPA receives from the North Bronson Former Facilities Site PRPs within the 60 day calendar period a written "good faith offer" which demonstrates the PRPs' qualifications and willingness to conduct or finance the RI/FS and Risk Assessment consistent with the attached AOC and SOW, U.S. EPA may extend its moratorium on commencement of the response action work up to an additional 30 calendar days. The purpose of this additional time is to allow the PRPs and U.S. EPA a period of time to finalize the settlement.

If a "good faith" proposal is not received within the initial 60-day moratorium, U.S. EPA, pursuant to Section 122(e)(4), may proceed to immediately undertake such further action as is authorized by law, utilizing public funds available to the Agency.

#### **Demand for Costs Incurred**

As mentioned above, in accordance with CERCLA and other authorities, U.S. EPA anticipates expending additional funds for response activities at the Site under the authority of CERCLA and other laws. In accordance with Section 107(a) of CERCLA, demand is also hereby made under these authorities for payment of all future costs that U.S. EPA may accrue in regard to the Site.

#### **PRP List**

As stated above, the attached list of the names and addresses of any other PRPs to whom this notification is being sent is provided to assist you in contacting other PRPs in this matter and to negotiate with U.S. EPA. This list is appended as Enclosure A to this letter.

#### **90 Day Deadline**

Except in extraordinary circumstances explained in a written request, no extension to the second 30 day moratorium period will be granted by U.S. EPA. As stated above, if no agreement can be

reached, pursuant to Section 122(e)(4), U.S. EPA may immediately proceed to undertake such further action as authorized by law to conduct a RI/FS and Risk Assessment at the Site.

#### **U.S. EPA Notification**

As a potentially responsible party, you should notify U.S. EPA in writing within 10 days of receipt of this letter of your willingness to participate in negotiations to perform or finance the activities described above. If U.S. EPA does not receive a timely response, U.S. EPA will assume that you do not wish to negotiate a resolution of your potential responsibility in connection with the Site and that you have declined any involvement in performing the response activities.

The response should indicate the appropriate names, addresses, and telephone numbers for further contact with you. If you are already involved in discussions with state or local authorities, engaged in voluntary clean-up action or involved in a lawsuit regarding this Site, you should continue such activities as you see fit. This letter is not intended to advise or direct you to restrict or discontinue any such activities; however, you are advised to report the status of those discussions or actions in the response to this letter and to provide a copy of the response to any other parties involved in those discussions or actions. The response letter should be sent to:

Rosita Clarke-Moreno (SR-6J)  
U.S. Environmental Protection Agency  
77 W. Jackson Blvd.  
Chicago, Illinois 60604

-and-

Larry L. Johnson (C-14J)  
U.S. Environmental Protection Agency  
77 W. Jackson Blvd.  
Chicago, Illinois 60604

#### **Natural Resource Trustee Notification**

By a copy of this letter, U.S. EPA is notifying the State of Michigan and the Natural Resources Trustees, in accordance with Section 122(j) of CERCLA, of its intent to enter into negotiations concerning the conduct of RI/FS and Risk Assessment also encouraging them to consider participation in such negotiations.

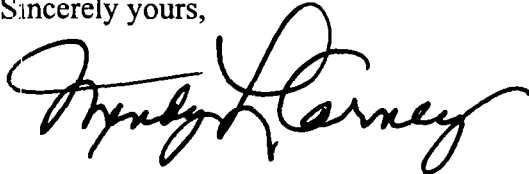
#### **Further Information**

If you need further information regarding this letter, you may contact Rosita Clarke-Moreno of the Remedial and Enforcement Response Branch at (312) 886-7251. If you have an attorney

handling your legal matters, please direct his or her questions to Larry L. Johnson of the Office of Regional Counsel, U.S. EPA, Region 5, at (312)886-6609.

We hope that you will give this matter your immediate attention.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Wendy L. Carney". The signature is fluid and cursive, with the first name "Wendy" and last name "Carney" clearly distinguishable.

Wendy L. Carney, Chief  
Remedial Response Branch #1

Enclosures

cc: (Letter and all Enclosures):

Mary Lynn Taylor  
U.S. DOI  
Office of Field Solicitor  
Three Parkway Center, Suite 385  
Pittsburgh, PA 15220

Russell J. Harding, Director  
Michigan Department of Environmental Quality  
Hollister Building  
PO Box 30473  
Lansing, MI 48909-7973

Robert Reichel  
Natural Resources Division  
Michigan Attorney General's Office  
5<sup>th</sup> Floor, Knapp's Centre  
300 S. Washington Square  
Lansing, MI 48913

**ENCLOSURE A****LIST OF ADDRESSES****OU1-Former Bronson Reel Facility**

David L. Tripp, Esq  
Dykema Gossett  
400 Renaissance Center  
Detroit, MI 48226

**OU2-Former L.A. Darling Facility**

Susan M. Franzetti, Esq  
Sonnenschein Nath & Rosenthal  
8000 Sears Tower  
Chicago, IL 60606

**OU3-Former Scott Fetzer Facility**

Stephen Giblin, Esq  
Jones, Day, Reavis & Pogue  
North Point  
901 Lakeside Ave.  
Cleveland, OH 44114

**ENCLOSURE B**

**ADMINISTRATIVE ORDER ON CONSENT**

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

North Bronson Former Facilities  
Former Scott Fetzer Facility - OU3  
Bronson, Michigan

ADMINISTRATIVE ORDER BY  
CONSENT PURSUANT TO  
SECTIONS 104, 107 AND 122 OF CERCLA

June 2001



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:        )  
                              )  
                              )  
                              )  
North Bronson            )  
Former Facilities,        )  
Scott Fetzer Facility)    )  
Bronson, MI                )  
          (B5Y1)            )  
                              )  
Respondent:                )  
Scott Fetzer Corp.        )

Docket No.  
  
ADMINISTRATIVE ORDER BY  
CONSENT PURSUANT TO  
SECTIONS 104, 107 & 122 OF THE  
COMPREHENSIVE ENVIRONMENTAL RESPONSE,  
COMPENSATION, AND LIABILITY ACT  
OF 1980, as amended, 42 U.S.C.  
§§ 9604, 9607 and 9622

**I. JURISDICTION AND GENERAL PROVISIONS**

This Administrative Order by Consent ("the Order") is entered voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and the Respondent. The Order is issued pursuant to the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9607, and 9622. This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

This Order requires the Respondent to conduct a Streamlined Remedial Investigation and Feasibility Study ("RI/FS") to investigate the nature and extent of contamination at the former Scott Fetzer Subarea (OU3) of the North Bronson Former Facilities Site in Bronson, Michigan, (Site) (generally depicted in figure A), and develop and evaluate potential remedial alternatives. The RI/FS shall evaluate response actions pursuant to 40 CFR Parts 300.415 and 300.430, respectively, to address the environmental concerns in connection with the areas of concern located within and immediately surrounding the Site located in Bronson, Branch County, Michigan. Remedial action(s) selected through the RI/FS process will be implemented pursuant to a Record of Decision to be issued by U.S. EPA.

A copy of this Order will also be provided to the State of Michigan, which has been notified of the issuance of this Order. The U.S. EPA and MDEQ have also notified the Federal and State Natural Resource trustees of the negotiations in this action pursuant to the requirements of Section 122(j) of CERCLA.

The Respondent to this Consent Order agrees to undertake all actions required by the terms and conditions hereunder, and consents to and will not contest or legally challenge the issuance of this Consent Order or the U.S. EPA's jurisdiction regarding this Consent Order. Respondent's participation in this Order shall not constitute an admission of liability or of U.S. EPA's Findings of Fact or Conclusions of Law and Determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondent agrees to comply with and be bound by the terms of this Order. Respondent further agrees that in a proceeding to enforce the terms of this Order, they will not contest the basis or validity of this Order or its terms.

## **II. PARTIES BOUND**

This Order applies to and is binding upon U.S. EPA, and upon Respondent and Respondent's heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Order.

Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order, and comply with this Order. Respondent shall be responsible for any noncompliance with this Order. Respondent shall file a copy of this Order with the local Recorder of Deeds.

## **III. STATEMENT OF PURPOSE**

In entering into this Order, the objectives of U.S. EPA and the Respondent are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, oil, pollutants or contaminants at or from the Site or facility, by conducting a remedial investigation; (b) to determine and evaluate alternatives for remedial action (if any) to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, oil, pollutants, or contaminants at or from the Site or facility, by conducting a feasibility study; and (c) to provide for the recovery of response and oversight costs incurred by U.S. EPA with respect to this Order.

## **IV. FINDINGS OF FACT**

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds, and, for purposes of enforceability of this Order only, the Respondent stipulates that

the factual statutory prerequisites under CERCLA necessary for issuance of this Order have been met. U.S. EPA's findings and this stipulation include the following:

1. The Scott Fetzer Company formerly known as H.A. Douglas Manufacturing and Douglas Components Corporation (DCC), Plant #1, "Site" consists of the former main plant area and Annex/CDF (Cyanide Destruction Facility) and is located at 141 Railroad Street in Bronson, Branch County, Michigan. The site is approximately ten acres in size and is situated in the industrial area of Bronson, Michigan. Scott Fetzer facility was used for mold machining and tin and zinc plating operations until it was shut down in the late 1980s. The Annex/CDF, which is located to the south of the facility, formerly housed a waste water treatment plant to treat waste water containing cyanide and a storage area for metals shavings. The site also contained three underground storage tanks (USTs).
2. In 1910 Harry A. Douglas began operations of HA Douglas Manufacturing in Bronson. This company designed and manufactured automobile electrical parts. Metal plating operations were part of the manufacturing process which included cadmium, chromium, silver, tin, and zinc. At this time, the company was located at the southwest corner of West Railroad and Matteson Streets and was referred to as Plant No.1. In 1939 Plant No. 1 was connected to the western lagoons (of the NBIA) via an industrial sewer line. In 1940 HA Douglas Manufacturing merged with Kingston Products and became Kingston Products-Douglas Division. In the late 1940s, the Bronson Plant of Kingston Products manufactured automobile electrical products, military products, including track links and electrical switches, and consumer products, including appliance timers and vacuum cleaners. Additions to Plant No.1 were made in the 1940s and 1950s. In 1949, Plant No.1, reportedly ceased discharging wastes to the western lagoons and began discharging to the eastern lagoons via a separate sewer line. In 1951, the Annex/CDF located south of the facility on State Street, was constructed. At this time, the Douglas Division, reportedly, ceased discharging to the eastern lagoons because wastewater was being treated at the CDF and discharged directly to the storm sewers. The Annex/CDF operated until 1973.
3. In 1968, Kingston Products was sold to the Scott Fetzer Corporation, Cleveland, Ohio, and in 1969 the Bronson Plant became the Douglas Division. Beginning in 1973, Plant No.1

plating processes included zinc and tin. Consequently, cyanide destruction processes ended and the facility was modified to remove metals and phosphate from the waste stream. In 1977 or 1978 the acid-tin process line was stopped, and in 1981 the alkaline-zinc process line was stopped. By 1987, the zinc-phosphate line stopped, which meant all plating at Plant No.1 had ceased. In 1988 approximately 325 gallons of PCB oil (from electrical transformers) was reportedly, removed from the site by Great Lakes Environmental Services, Inc. (RIFS Report, 7/93 NBIA)

4. Michigan Department of the Environment (MDEQ) Kalamazoo District Office, has conducted recent demolishing and fencing at the Site. Site buildings and the annex were demolished, subsurface structures were removed to a depth of 3 feet below grade, such as concrete slabs, piping, etc. Concrete pits encountered throughout the building floor were pumped, removed and backfilled to grade. The three USTs at the site were also removed. Hazardous materials currently exist in the former Plating Area (concrete) and Materials Handling Area (soils). The hazardous materials have been capped with visqueen and one foot of soil. The site is currently fenced.
5. As part of the Remedial Investigations for the North Bronson Industrial Area (NBIA) Superfund Site that took place from 1989 - 1993, Michigan Department of Natural Resources (now MDEQ) investigated the site during Phase II sampling activities and samples were collected for surface soils, subsurface soils, and groundwater. All samples were collected on the perimeter of the Scott Fetzer buildings and facilities because no access to facilities was provided at the time. Metals, TCE, 1,2-DCE and 1,1,1-TCA were detected in soils. TCE, 1,2-DCE, and vinyl chloride were the highest concentrations detected in groundwater. Based on these studies, the Scott Fetzer area is potentially a source for chlorinated ethenes at the North Bronson Former Facilities site.
6. As part of Investigations for Operable Unit 2 - Industrial Sewer of the North Bronson Industrial Area Superfund Site, MDEQ investigated the industrial sewer that runs along the Scott Fetzer property and was used by Scott Fetzer to discharge waste to the eastern and western lagoons. Results of these studies are presented in Technical Memorandums 1 and 2 dated ( 1998 and 2000). Results of these investigations show TCE contamination in soil and groundwater. Scott Fetzer subarea is believed to be a source of

groundwater contamination in the area. Industrial Sewer was also found to be a source of contamination.

7. On September 27, 2000, the Respondent, along with other parties was issued a Special Notice Letter to begin negotiations with U.S. EPA to conduct a Baseline Risk Assessment and Feasibility Study at the Operable Unit 2 of the North Bronson Industrial Area Superfund Site. Negotiations for this Operable Unit resulted in the need to evaluate individual source areas, such as the Scott Fetzer former facility.

#### **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

Based on the Findings of Fact set forth above, and the Administrative Record in this matter, U.S. EPA has determined that:

1. The former Scott Fetzer Subarea in Bronson, Michigan Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. Cyanide, Zinc, Chromium, other metals, TCE and all other VOCs and SVOCs are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
3. The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Respondent is a person who either allegedly generated the hazardous substances found at the Site, is a person who at the time of disposal of any hazardous substances owned or operated the Site, or is a person who arranged for disposal or transport for disposal of hazardous substances at the Site. Each Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
5. The presence of hazardous substances at the Site or the past, present or potential migration of hazardous substances currently located at or emanating from the Site, or the placement of hazardous substances from the Site onto off-site areas constitute actual and/or threatened "releases" of hazardous substances from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).
6. The actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP and CERCLA.

## VI. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, it is hereby ordered and agreed that the Respondent shall comply with the following provisions, including but not limited to all attachments to this Order, and all documents incorporated by reference into this Order, and perform the following actions:

1. Designation of Contractor, Project Coordinator, On-Scene Coordinator or Remedial Project Manager

Respondent shall perform the actions required by this Order themselves or retain a contractor to undertake and complete the requirements of this Order. Respondent shall notify U.S. EPA of Respondent's qualifications or the name and qualifications of such contractor, whichever is applicable, within 30 calendar days of the effective date of this Order. Respondent shall also notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 10 calendar days prior to commencement of such work. U.S. EPA retains the right to disapprove of the Respondent or any of the contractors and/or subcontractors retained by the Respondent. If U.S. EPA disapproves a selected contractor, Respondent shall retain a different contractor within 10 calendar days following U.S. EPA's disapproval, and shall notify U.S. EPA of that contractor's name and qualifications within 14 calendar days of U.S. EPA's disapproval.

Within 10 calendar days after the effective date of this Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If U.S. EPA disapproves a selected Project Coordinator, Respondent shall retain a different Project Coordinator within 14 calendar days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within 14 calendar days of U.S. EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by Respondent.

The U.S. EPA has designated Rosita Clarke-Moreno of the Remedial Response Branch, Region 5, as its Remedial Project Manager ("RPM"). MDEQ's Project Manager is Deborah Larsen. Respondent shall direct all submissions required by this Order to the U.S. EPA RPM and copy the MDEQ Project Manager, along with the required copies in accordance with Section XIX (Submittals/Correspondence). Respondent is encouraged to make

its submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies.

U.S. EPA, MDEQ, and Respondent shall have the right, subject to the immediately preceding paragraph, to change their designated RPM or Project Coordinator. U.S. EPA and MDEQ shall notify the Respondent, and Respondent shall notify U.S. EPA and MDEQ, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice within 4 calendar days of oral notification.

## 2. Work to Be Performed

Respondent shall develop and submit to U.S. EPA an RI/FS report in accordance with the attached Statement of Work ("SOW"). This SOW is incorporated into and made an enforceable part of this Order. The areas of the Site and areas where hazardous substances, pollutants, contaminants and/or oil, have migrated to or have been come to be placed, from the Site will be subject to the RI/FS processes. U.S. EPA will consider the extent of any completed investigation activities conducted for the Site in determining the extent of RI/FS activities, as appropriate.

The RI/FS report shall be consistent with, at a minimum, U.S. EPA guidance entitled, "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (U.S. EPA, Office of Emergency and Remedial Response, October, 1988) and any other guidance that U.S. EPA uses in conducting a RI/FS.

Respondent's proposed schedule for the implementation of work plans required under this Order shall be included in the Work Plan/Sampling Plan.

### 2.1 RI/FS Support Sampling Work Plan

Within 30 calendar days of the effective date of this Order, Respondent shall submit to U.S. EPA for review a draft work plan for further investigation of the Site. Respondent shall use all available information in proposing sample locations, depths, etc., for the investigation. Further, as part of the investigation, Respondent shall, at a minimum, visually identify the extent of the material, in addition to taking analytical samples.

Within 30 calendar days after receipt of U.S. EPA's comments, Respondent shall submit to U.S. EPA for approval the Final RI/FS

Support Sampling Plan that is consistent with this Order and the SOW.

U.S. EPA may approve, disapprove, require revisions to, or modify the draft RI/FS Support Sampling work plan. If U.S. EPA requires revisions, Respondent shall submit a revised work plan incorporating all of U.S. EPA's required revisions within 21 calendar days of receipt of U.S. EPA's notification of the required revisions.

In the event of U.S. EPA disapproval of the revised work plan, Respondent may be deemed in violation of this Order. In such event, U.S. EPA retains the right to terminate this Order, or any part or subpart herein, and conduct a complete work plan and the sampling activities, and obtain reimbursement for costs incurred in conducting the work plan and the sampling activities from the Respondent.

Upon approval by U.S. EPA, Respondent shall implement all activities required by the work plan in accordance with the approved schedule. Respondent shall not commence or undertake any support sampling activities either on or off-Site without prior U.S. EPA.

#### 2.1.1 Health and Safety Plan

As part of the RI/FS Support Sampling work plan, the Respondent shall submit for U.S. EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. The plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910. If U.S. EPA determines it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by U.S. EPA, and implement the plan during the pendency of the RI/FS and/or EECA.

#### 2.1.2 Quality Assurance and Sampling

As part of the RI/FS Support Sampling work plan, the Respondent shall ensure that all sampling and analyses performed pursuant to this Order conforms to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with U.S. EPA guidance.



Upon request by U.S. EPA, Respondent shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondent shall provide to U.S. EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondent shall also ensure provision of analytical tracking information consistent with, at a minimum, OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by U.S. EPA, Respondent shall allow U.S. EPA, or their authorized representatives to take split and/or duplicate samples of any samples collected by Respondent or their contractors or agents while performing work under this Order. Respondent shall notify U.S. EPA not less than 14 calendar days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary.

## 2.2 RI/FS Report

Within 180 calendar days following completion of the investigation activities the Respondent shall submit to U.S. EPA for approval a draft RI/FS Report that is consistent with this Order and the SOWs.

U.S. EPA may approve, disapprove, require revisions to, or modify the draft RI/FS Report. If U.S. EPA requires revisions, Respondent shall submit a revised RI/FS Report incorporating all of U.S. EPA's required revisions within 21 calendar days of receipt of U.S. EPA's notification of the required revisions.

In the event of U.S. EPA disapproval of the revised RI/FS Report, Respondent may be deemed in violation of this Order. In such event, U.S. EPA retains the right to terminate this Order, conduct a complete RI/FS, and obtain reimbursement for costs incurred in conducting the RI/FS from the Respondent.

The revised RI/FS report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

*Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this Report, the information submitted is true, accurate, and complete.*

Respondent shall not commence or undertake any remedial actions at the Site without prior U.S. EPA.

### 2.3 Reporting

Respondent shall submit a monthly written progress report to U.S. EPA concerning actions undertaken pursuant to this Order, beginning 30 calendar days after the effective date of this Order, until termination of this Order, unless otherwise directed in writing by the RPM. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

### 2.4 Additional Work

In the event that the U.S. EPA or the Respondent determine(s) that additional work is necessary to accomplish the objectives of the RI/FS Report, notification of such additional work shall be provided to the other part(y) in writing. Any additional work which Respondent determines to be necessary shall be subject to U.S. EPA's written approval prior to commencement of the additional work. Respondent shall complete, in accordance with standards, specifications, and schedule U.S. EPA has approved, any additional work Respondent has proposed, and which U.S. EPA has approved in writing or that U.S. EPA has determined to be necessary, and has provided written notice of pursuant to this paragraph.

### 3. Access to Property and Information

Respondent shall obtain access to the Site and off-site areas to which access is necessary to implement this Order, and shall provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this Order. Such access shall be provided to U.S. EPA, and their employees, contractors, agents, consultants, designees, representatives, and United States Government and State of Michigan Department of Environmental Quality representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas to which Respondent has access in order to conduct actions which U.S. EPA determine to be necessary. Respondent shall submit to U.S. EPA, upon receipt, the results of all sampling or tests and all other data generated by Respondent or their contractor(s), or on the Respondent's behalf during implementation of this Order.

Respondent shall use its best efforts to obtain all necessary access agreements within 30 calendar days after the effective date of this Order, or as otherwise specified in writing by the RPM. Respondent shall immediately notify U.S. EPA within 4 calendar days if, after using their best efforts, they are unable

to obtain such agreements. Respondent shall describe in writing their efforts to obtain access. U.S. EPA may, in its discretion, then assist Respondent in gaining access, to the extent necessary to effectuate the actions described herein, using such means as U.S. EPA deems appropriate. Respondent shall reimburse U.S. EPA for all costs and attorneys fees incurred by the United States in obtaining such access.

#### 4. Record Retention, Documentation, Availability of Information

Respondent shall preserve all documents and information in their possession relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the actions required by this Order. At the end of this six year period and at least 60 calendar days before any document or information is destroyed, Respondent shall notify U.S. EPA that such documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, Respondent shall provide copies of any such non-privileged documents and information retained under this Section at any time before expiration of the six year period at the written request of U.S. EPA. If Respondent asserts a privilege in lieu of providing documents, they shall provide U.S. EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Respondent. However, no documents, reports, or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

#### 5. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by U.S. EPA, with the U.S. EPA Revised Off-Site Rule, 40 CFR § 300.440, 58 Federal Register 49215 (Sept. 22, 1993).

#### 6. Compliance With Other Laws

Respondent shall perform all activities required pursuant to this Order in accordance with all the requirements of all federal and state laws and regulations. U.S. EPA has determined that the activities required by this Order are consistent with the National Contingency Plan ("NCP").

Except as provided in Section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the activities conducted entirely on-site. Where any portion of the activities is to be conducted off-site and requires a federal or state permit or approval, the Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. In the event that such permits are not issued to allow for off-site activities, U.S. EPA agrees that the specific activities directly related to and dependant upon such permit may be deferred until the permit is issued.

This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

#### 7. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the RPM or, in the event of her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions. If Respondent fails to respond, U.S. EPA and MDEQ may respond to the release or endangerment and reserve the right to recover costs associated with that response.

Respondent shall submit a written report to U.S. EPA within 10 calendar days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondent shall also comply with any other notification requirements, including those in CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

#### VII. AUTHORITY OF THE U.S. EPA REMEDIAL PROJECT MANAGER

The RPM shall be responsible for overseeing the implementation of this Order. The RPM shall have the authority vested in an RPM and OSC by the NCP, including the authority to halt, conduct, or direct any activities required by this Order, or to direct any other response action undertaken by U.S. EPA, or Respondent at the Site. Absence of the RPM from the Site shall not be cause for stoppage of work unless specifically directed by the RPMs.

### VIII. REIMBURSEMENT OF COSTS

Respondent shall pay all Oversight Costs, of the United States and the State of Michigan related to the Site that are not inconsistent with the NCP.

U.S. EPA will send Respondent a bill for "oversight costs" on an annual basis. "Oversight Costs" are all costs, including, but not limited to, direct and indirect costs, that U.S. EPA, and their employees, agents, contractors, consultants, and other authorized representatives incur in reviewing or developing plans, reports and other items pursuant to this AOC. "Oversight Costs" shall also include all costs, including direct and indirect costs, paid by the United States and/or the State of Michigan relating to this AOC between September 27, 2000 and the effective date of this AOC.

Respondent shall, within 45 calendar days of receipt of a bill from U.S. EPA, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

Respondent shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - North Bronson Former Facilities-Scott Fetzer Subarea Site" and shall reference the payor's name and address, the EPA site identification number (B5Y1), and the docket number of this Order.

In the event that any payment is not made within the deadlines described above, Respondent shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest shall begin to accrue on the date of the Respondent's receipt of the bill. Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section.

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs into the Hazardous Substance Fund

as specified above on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the RPM.

#### **IX. DISPUTE RESOLUTION**

The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

If the Respondent objects to any U.S. EPA action taken pursuant to this Order, including billings for response costs, the Respondent shall notify U.S. EPA in writing of their objection(s) within 10 calendar days of such action, unless the objection(s) has (have) been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondent's position, and all supporting documentation on which the Respondent relies (hereinafter the "Statement of Position").

U.S. EPA and Respondent shall within 15 calendar days of U.S. EPA's receipt of the Respondent's Statement of Position, attempt to resolve the dispute through formal negotiations ("Negotiation Period"). The Negotiation Period of 15 calendar days may be extended at the sole discretion of U.S. EPA. U.S. EPA's decision regarding an extension of the Negotiation Period shall not constitute a U.S. EPA action subject to dispute resolution or a final Agency action giving rise to judicial review.

An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph.

Any agreement reached by the parties pursuant to this Section shall be in writing, signed by all parties, and shall upon the signature by the parties be incorporated into and become an enforceable element of this Order. If the parties are unable to reach an agreement within the Negotiation Period the Director of the U.S. EPA Superfund Division, Region 5, will issue a written decision on the dispute to the Respondent. The decision of U.S. EPA shall be incorporated into and become an enforceable element of this Order upon Respondent's receipt of the decision regarding the dispute.

Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs. No U.S. EPA decision made pursuant to this Section shall constitute a final Agency action giving rise to judicial review.

#### **X. FORCE MAJEURE**

Respondent agrees to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondent that delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work, increased cost of performance, or normal weather events.

Respondent shall notify U.S. EPA orally within 24 hours after Respondent becomes aware of any event that Respondent contend constitute a force majeure, and in writing within 7 calendar days after Respondent become aware of any events which constitute a force majeure. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delays. Failure to comply with the notice provision of this Section shall be grounds for U.S. EPA to deny Respondent an extension of time for performance. Respondent shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay to the satisfaction of U.S. EPA.

If U.S. EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by U.S. EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

# **XI. STIPULATED AND STATUTORY PENALTIES**

For each calendar day, or portion thereof, that Respondent fails to fully perform any requirement of this Order in accordance with the schedule established pursuant to this Order, Respondent shall be liable as follows:

<u>Deliverable/Activity</u>	<u>Penalty For Days 1-7</u>	<u>Penalty For &gt; 7 Days</u>
Failure to Submit a Draft work plan or RI/FS Report	\$500/Day	\$1250/Day
Failure to Submit a revised work plan or RI/FS Report	\$500/Day	\$1250/Day
Failure to Submit a Data Report	\$500/Day	\$1,000/Day
Late Submittal of Progress Reports or Other Miscellaneous Reports/Submittals	\$250/Day	\$ 500/Day
Failure to Meet any Scheduled Deadline in the Order	\$250/Day	\$ 500/Day

Upon receipt of written demand by U.S. EPA, Respondent shall make payment to U.S. EPA within 20 calendar days and interest shall accrue on late payments in accordance with Section VIII of this Order ("Reimbursement of Costs").

Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether U.S. EPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligation(s) to complete the performance of the work required under this Order. Stipulated penalties shall accrue, but need not be paid, during



any dispute resolution period concerning the particular penalties at issue. If Respondent prevails upon resolution, Respondent shall pay only such penalties as the resolution requires. In its unreviewable discretion, U.S. EPA may waive its rights to demand all or a portion of the stipulated penalties due under this Section.

The stipulated penalties set forth above shall not be the sole or exclusive remedy for violations of this Order and shall not preclude U.S. EPA from pursuing any other remedy or sanctions which are available to the agencies because of the Respondent's failure to comply with this Consent Order. Should Respondent violate this Order or any portion hereof, U.S. EPA may carry out all or part of the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §§ 9604. Payment of stipulated penalties does not alter Respondent obligation to complete performance under this Consent Order.

## **XII. RESERVATION OF RIGHTS**

Except as specifically provided in this Order, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, or oil or hazardous or solid waste on, at, or from the Site. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. U.S. EPA reserves its rights in regard to claims, prior actions, orders, or agreements with Respondent. The covenant not to sue by U.S. EPA set forth in Section XIV does not pertain to any matters other than those expressly identified therein. The United States and U.S. EPA reserve, and this Agreement is without prejudice to, all rights against the Respondent with respect to all other matters, including but not limited to:

- a. liability for failure of Respondent to meet a requirement of this Order by Consent;
- b. liability for costs incurred or to be incurred that are not Past Response Costs or Oversight Costs as defined in Section VII of this Order;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606,

excluding work performed under the terms of this Order by Consent;

d. criminal liability; and

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

### **XIII. OTHER CLAIMS**

By issuance of this Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or U.S. EPA, shall not be a party or be held out as a party to any contract entered into by the Respondent or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order.

Except as expressly provided in Section XIV (Covenant Not To Sue), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondent waives any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order.

No action or decision by U.S. EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

### **XIV. COVENANT NOT TO SUE**

Except as otherwise specifically provided in this Order, upon issuance of the U.S. EPA notice referred to in Section XVIII (Notice of Completion), U.S. EPA covenants not to sue Respondent for judicial imposition of damages or civil penalties or to take

administrative action against Respondent for any failure to perform actions agreed to in this Order except as otherwise reserved herein.

Except as otherwise specifically provided in this Order, in consideration and upon Respondent's payment of the Oversight Costs specified in Section VIII of this Order, U.S. EPA covenants not to sue or to take administrative action against Respondent under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for recovery of Oversight Costs incurred by the United States in connection with this action or this Order. This covenant not to sue shall take effect upon the receipt by U.S. EPA of the payments required by Section VIII (Reimbursement of Costs).

These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Order. These covenants not to sue extend only to the Respondent and do not extend to any other person.

#### **XV. CONTRIBUTION PROTECTION**

With regard to claims for contribution against Respondent for matters addressed in this Order, the Parties hereto agree that the Respondent is entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4). Nothing in this Order precludes Parties to this Order from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

#### **XVI. INDEMNIFICATION**

Respondent agrees to indemnify, save and hold harmless the United States and its agencies, departments, officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondent and Respondent's officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between (any one or more of) Respondent, and any persons for performance of work on or relating to the Site, including claims on account of construction delays; and (C) for any claim or cause of action against the

United States based on negligent action taken solely and directly by U.S. EPA including oversight, modification and/or approval of plans or activities of the Respondent. The U.S. EPA shall not be construed to be a party to any contract involving the Respondent at the Site.

#### **XVII. MODIFICATIONS**

Except as otherwise specified in Section VI. 2. (Work To Be Performed), if any party believes modifications to any plan or schedule are necessary during the course of this project, they shall conduct informal discussions regarding such modifications with the other parties. Any agreed-upon modifications to any plan or schedule shall be memorialized in writing within 10 calendar days; however, the effective date of the modification shall be the date of the RPM's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties. Any modification to this Order shall be incorporated into and made an enforceable part of this Order.

If Respondent seeks permission to deviate from any approved plan or schedule, Respondent's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve Respondent of their obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

#### **XVIII. NOTICE OF COMPLETION**

When U.S. EPA determines that all work, including the RI/FS Report, has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention, payment of costs), U.S. EPA will provide written notice to the Respondent.

#### **XIX. SUBMITTALS/CORRESPONDENCE**

Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Order, shall be deemed

submitted either when hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile in accordance with this section.

Correspondence and communications from U.S. EPA and MDEQ shall be addressed to:

Steven Giblin  
(Scott Fetzer Corporation)  
Jones, Day, Reavis & Pogue  
North Point  
901 Lakeside Ave.  
Cleveland, Ohio 44114

All correspondence, communication, and submittals from Respondent shall be directed to the following and additional individuals they identify:

Rosita Clarke-Moreno  
Remedial Project Manager  
United States Environmental Protection Agency  
77 West Jackson Blvd., Mailcode SR-6J  
Chicago, Illinois 60604-3590  
Phone (312) 886-7251  
FAX (312) 886-4071  
Email "clarke.rosita@epa.gov"

With copies to:

Deborah Larsen  
Project Manager  
Michigan Department of Environmental Quality  
301 S. Capital  
Lansing, Michigan 48909

Larry Johnson  
Associate Regional Counsel  
U.S. EPA - Region 5  
77 West Jackson Boulevard, C-14J  
Chicago, Illinois 60604-3590  
Phone (312) 886-6609  
FAX (312) 886-0747  
E-mail "johnson.larry@epa.gov"

**XX. COORDINATION WITH NATURAL RESOURCES TRUSTEES**

Pursuant to Sections 104(b)(2) and 122(j) of CERCLA, 42 U.S.C. 9604(b)(2) and 9622(j), U.S.EPA and MDEQ have also notified the Trustees of the negotiation of this agreed Order.

Upon completion and approval of the RI/FS pursuant to Section VI of this Order, Respondent may request that the Trustees enter into a covenant not to sue for natural resource damage assessment activity commensurate with the extent to which the Respondent's work performed under this order satisfies the injury determination and other natural resource damage assessment requirements or the restoration, rehabilitation or replacement, or compensation requirements of 15 CFR Part 990 or 43 CFR Part 11. The Trustees shall not be required to enter into any such covenant not sue for natural resource damage assessment activity.

**XXI. SEVERABILITY**

If a court of competent jurisdiction issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

**XXII. EFFECTIVE DATE AND COMPUTATION OF TIME**

This Order shall be effective upon signature by the Director, Superfund Division, U.S. EPA Region 5. For the purposes of this Order, the term "day" shall mean a calendar day. In computing any period of time under this Order, where the last day of the period would fall on a Saturday or Sunday, the period shall run until noon, Central Time of the following Monday.

IN THE MATTER OF:

North Bronson Former Facilities, Scott Fetzner Former Facility  
Site (OU3) Bronson, MI

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

By \_\_\_\_\_

IT IS SO ORDERED AND AGREED

BY: \_\_\_\_\_  
William E. Muno, Director  
Superfund Division United States  
Environmental Protection Agency  
Region 5

DATE: \_\_\_\_\_

**ENCLOSURE C**

**SCOPE OF WORK**



**SCOPE OF WORK FOR  
STREAMLINED REMEDIAL INVESTIGATION AND FEASIBILITY STUDY  
AT  
FORMER SCOTT FETZER FACILITY – OU3  
NORTH BRONSON FORMER FACILITIES, BRONSON, MICHIGAN**

**I. PURPOSE:**

The purpose of this Scope of Work (SOW) is to set forth requirements for the preparation of a streamlined Remedial Investigation and Feasibility Study (RI/FS). The RI shall evaluate the nature and extent of contamination resulting from the former operations of the former Scott Fetzer Facility (Site) and also assess the risk from this contamination on human health and the environment. The FS Report shall evaluate alternatives for addressing the impact to human health and/or the environment from contamination at the Site. The RI and FS Reports shall be conducted, at a minimum, consistent with the "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (U.S. EPA, Office of Emergency and Remedial Response, October, 1988) and any other guidances that U.S. EPA uses in conducting a RI/FS, as well as any additional requirements in the administrative order. The Respondents shall furnish all personnel, materials, and services necessary for, or incidental to, performing the RI/FS at the Scott Fetzer facility Area Site, except as otherwise specified herein.

At the completion of the RI/FS, U.S. EPA will be responsible for the selection of a Site remedy and will document this selection in a Record of Decision (ROD). The remedial action selected by U.S. EPA will meet the cleanup standards specified in CERCLA Section 121. That is, the selected remedial action will be protective of human health and the environment, will be in compliance with, or include a waiver of, applicable or relevant and appropriate requirements of other laws, will be cost-effective, will utilize permanent solutions and alternative treatment technologies or resource recovery technologies, to the maximum extent practicable, and will address the statutory preference for treatment as a principal element. The final RI/FS reports, as adopted by U.S. EPA, and the risk evaluation/assessment will, with the administrative record, form the basis for the selection of the site's remedy and will provide the information necessary to support the development of the ROD.

As specified in CERCLA Section 104(a)(1), as amended by SARA, U.S. EPA will provide oversight of the Respondent's activities throughout the RI/FS, including all field sampling activities. The Respondent will support U.S. EPA's initiation and conduct of activities related to the implementation of oversight activities.

**II. SCOPE:**

The tasks to be completed as part of this RI/FS are:

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- Task 1. RI/FS Work Plan and Sampling Plan
- Task 2. Remedial Investigation
- Task 3. RI/FS Report
- Task 4. Progress Reports

### **III. TASK 1: RI/FS WORK PLAN and SAMPLING PLAN**

Within 30 calendar days of the effective date of the Administrative Order, Respondent shall submit a Work Plan and Sampling Plan to U.S. EPA that addresses all data acquisition activities. The objective of this RI/FS Work Plan and sampling plan is to further determine the extent of contamination at the Site beyond that already identified by previous site investigations. The plan shall contain a description of equipment specifications, required analyses, sample types, and sample locations and frequency. The plan shall address specific hydrologic, hydrogeologic, and air transport characterization methods including, but not limited to, geologic mapping, geophysics, field screening, drilling and well installation, flow determination, and soil/water/sediment/waste sampling to determine extent of contamination.

Respondent shall identify the data requirements of specific remedial technologies that may be necessary to evaluate remedial activities in the RI/FS and the Respondent shall provide a schedule stating when events will take place and when deliverables will be submitted.

The RI/FS Work Plan and Sampling Plan shall include the following information:

#### **A. Site Background**

A brief summary of the Site location, general Site physiography, hydrology and geology shall be included. A summary description of the data already available shall be included which will highlight the areas of known contamination and the levels detected. Tables shall be included to display the minimum and maximum levels of detected contaminants across the Site.

#### **B. Data Gap Description**

Respondent shall make an analysis of the currently available data to determine the areas of the Site which require additional data in order to define the extent of contamination for purposes of implementing a remedial action. A description of the number, types, and locations of additional samples to be collected shall be included in this section of the sampling plan.

Descriptions of the following activities shall also be included:

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1. **Waste Characterization**

Respondent shall include a program for characterizing any waste materials at the Site. This shall include an analysis of current information/data on past disposal practices at the Site. For buried wastes, test pits/trenches and deep soil borings shall be proposed in the plan to determine waste depths and volume and to determine the extent of cover over fill areas. Soil gas surveys shall also be proposed for the areas on and around fill areas of the site.

2. **Hydrogeologic Investigation**

The plan shall include the degree of hazard, the mobility of pollutants, discharges/recharge areas, regional and local flow direction and quality, and local uses of groundwater. The plan shall also develop a strategy for determining horizontal and vertical distribution of contaminants and may include other hydraulic tests such as slug tests, and grain size analysis to assist in determining future potential remediation options. Upgradient samples shall be included in the plan.

3. **Soils and Sediments /Industrial Sewer Investigation**

Respondent shall include a program to determine the extent of contamination of surface and subsurface soils at the Site. The plan shall also determine the extent, including depth, of contamination of sediments from the Industrial Sewer utilized by the Scott Fetzer facility within and around the property. Respondent shall also determine if the Industrial Sewer is a source of contamination at the Site.

4. **Air Investigation**

Respondent shall include a program to determine the extent of atmospheric contamination from the various source areas at the Site. The program shall address the tendency of the substances identified through the waste characterization (i.e., PCBs) to enter the atmosphere, local wind patterns, and the degree of hazard.

**C. Sampling Procedures**

Respondent shall include a description of the depths of sampling, parameters to be analyzed, equipment to be used, decontamination procedures to be followed, sample quality assurance, data quality objectives and sample management procedures to be utilized in the field. All sampling and analyses performed shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control

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("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with U.S. EPA guidance.

Upon request by U.S. EPA, Respondent shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondent shall provide to U.S. EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondent shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites.

Upon request by U.S. EPA, Respondent shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent or their contractors or agents. Respondent shall notify U.S. EPA not less than 10 business days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary.

#### **D. Health and Safety Plan**

Respondent shall prepare a Site safety plan which is designed to protect on-site personnel, area residents and nearby workers from physical, chemical and all other hazards posed by this sampling event. The safety plan shall develop the performance levels and criteria necessary to address the following areas:

- General requirements
- Personnel
- Levels of protection
- Safe work practices and safe guards
- Medical surveillance
- Personal and environmental air monitoring
- Personal hygiene
- Decontamination - personal and equipment
- Site work zones
- Contaminant control
- Contingency and emergency planning (including response to fires/explosions)
- Logs, reports and record keeping

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The safety plan shall, at a minimum, follow U.S. EPA guidance document Standard Operating Safety Guides (Publication 9285.1-03, PB92-963414, June 1992), and all OSHA requirements as outlined in 29 CFR 1910.

#### **E. Schedule**

Respondent shall include a schedule which identifies timing for initiation and completion of all tasks to be completed as part of this RI/FS Work Plan and Sampling Plan.

#### **IV. TASK 2: REMEDIAL INVESTIGATION**

Respondent shall conduct the Remedial Investigation according to the U.S. EPA approved Work Plan/Sampling Plan and schedule. Respondent shall coordinate activities with U.S. EPA's Remedial Project Manager (RPM). Respondent shall provide the RPM with all laboratory data.

#### **V. TASK 3: REMEDIAL INVESTIGATION/FEASIBILITY STUDY (RI/FS)**

Within 180 calendar days of the collection of the last field sample as part of the Remedial Investigation (Task 2), Respondent shall submit to U.S. EPA for approval a draft RI/FS report addressing all of the former Scott Fetzer Facility. The RI/FS shall be consistent with the administrative order and this SOW. The RI/FS shall be completed in accordance with the following requirements:

##### **1 Executive Summary**

The Executive Summary shall provide a general overview of the contents of the RI/FS. It shall contain a brief discussion of the Site and the current and/or potential threat posed by conditions at the Site.

##### **2 Site Characterization**

The RI/FS shall summarize available data on the physical, demographic, and other characteristics of the Site and the surrounding areas. Specific topics which shall be addressed in the site characterization are detailed below. The site characterization shall concentrate on those characteristics necessary to evaluate and select an appropriate remedy.

##### **2.1 Site Description and Background**

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The site description includes current and historical information. The following types of information shall be included, where available and as appropriate, to the site-specific conditions and the scope of the remedial action.

- 2.1.1 Site Location and Physical Setting
- 2.1.2 Present and Past Facility Operations and Disposal Practices
- 2.1.3 Geology/Hydrology/Hydrogeology
- 2.1.4 Current and past groundwater usage in the site area
- 2.1.5 Surrounding Land Use and Populations
- 2.1.6 Sensitive Ecosystems
- 2.1.7 Meteorology/Climatology

## **2.2 Groundwater Fate and Transport**

The groundwater section of the RI/FS shall include a discussion of the contaminant characteristics, fate and transport processes, contaminant migration trends and modeling. The scope and detail of the discussion shall be adequate to interface with a regional groundwater model to be developed for the North Brønson Former Facilities (Industrial Area). The type and detail of the data shall be consistent with the data generated in OU1 investigations for the NBIA SF Site.

## **2.3 Previous Removal Actions**

The site characterization section shall also describe any previous removal and remedial actions at the Site. Previous information, if relevant, shall be organized as follows:

- The scope and objectives of the previous removal action(s)
- The amount of time spent on the previous removal action(s)
- The nature and extent of hazardous substances, pollutants, or contaminants treated or controlled during the previous removal action(s) (including all monitoring conducted)
- The technologies used and/or treatment levels used for the previous removal action(s).
- The building demolition activities conducted at the Site.

## **2.4 Source, Nature and Extent of Contamination**

This section shall summarize the available site characterization data for the Site, including the locations of the hazardous substances, pollutants, or contaminants; the

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quantity, volume, size or magnitude of the contamination; and the physical and chemical attributes of the hazardous pollutants or contaminants.

## **2.5 Analytical Data**

This section shall present the available data, including, but not limited to, soil, groundwater, surface water, sediments, and air. This section should discuss any historical data gaps that were identified, and the measures taken to develop all necessary additional data.

## **2.6 Risk Assessment**

The risk assessment shall focus on actual and potential risks to persons coming into contact with on-site contaminants as well as risks to the surrounding residential and industrial worker populations from exposure to contaminated soils, sediments, surface water, air, and ingestion of contaminated organisms in surrounding impacted ecosystems. Reasonable maximum estimates of exposure shall be defined for both current land use conditions and reasonable future land use conditions. It shall use data from the Site to identify the chemicals of concern, provide an estimate of how and to what extent human receptors might be exposed to these chemicals, and provide an assessment of the health effects associated with these chemicals. The evaluation shall project the potential risk of health problems occurring if no cleanup action is taken at the Site and establish target action levels for COCs (carcinogenic and non-carcinogenic). The risk evaluation shall be conducted in accordance with U.S. EPA guidance including, at a minimum: Risk Assessment Guidance for Superfund (RAGS) (EPA/540/1-89/002, December 1989) and RAGS Part D (EPA 540/R/97/033, January 1998) and Ecological Risk Assessment Guidance for Superfund, Process for Designing and Conducting Ecological Risk Assessments, (EPA/540/R/97/006, June 1997).

The risk assessment shall also include the following elements:

- Hazard Identification (sources). The Respondent shall review available information on the hazardous substances present at the Site and identify the major contaminants of concern.
- Dose-Response Assessment. Contaminants of concern should be selected based on their intrinsic toxicological properties.
- Conceptual Exposure/Pathway Analysis.
- Characterization of Site and Potential Receptors.
- Exposure Assessment. Respondent shall develop reasonable maximum estimates of exposure for both current land use conditions and potential land use conditions at the Site.

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- Risk Characterization.
- Identification of Limitations/Uncertainties.

### **3     Identification of Remedial Action Objectives**

The RI/FS shall develop remedial and, where appropriate, removal action objectives, taking into consideration the following factors:

- Prevention or abatement of actual or potential exposure to nearby human populations, (including workers), animals, or the food chain from hazardous substances, pollutants, or contaminants;
- Prevention or abatement of actual or potential contamination of drinking water supplies and ecosystems;
- Stabilization or elimination of hazardous substances in drums, barrels, tanks, or other bulk storage containers that may pose a threat of release;
- Treatment or elimination of hazardous substances, pollutants, or contaminants in soils or sediments that may migrate;
- Elimination of threat of fire or explosion;
- Acceptable chemical-specific contaminant levels, or range of levels, for all exposure routes.
- Mitigation or abatement of other situations or factors that may pose threats to public health, welfare, or the environment.

#### **3.1     Determination of Remedial Action Scope**

The RI/FS shall define the broad scope and specific short-term and long-term objectives of the remedial action and address the protectiveness of the remedial action.

#### **3.2     Determination of Remedial Action Schedule**

The general schedule for remedial action and, where appropriate, removal activities shall be developed, including both the start and completion time for the remedial action.

#### **3.3     Identification of and Compliance with ARARs**

The RI/FS shall identify all applicable, relevant and appropriate requirements at both the federal and state levels that will apply to the remedial action. The RI/FS shall also describe how the ARARs will be met.

### **4     Identification and Analysis of Remedial Action Alternatives**



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Based on the analysis of the nature and extent of contamination and on the cleanup objectives developed in the previous section, a limited number of alternatives appropriate for addressing the remedial action objectives shall be identified and assessed. Whenever practicable, the alternatives shall also consider the CERCLA preference for treatment over conventional containment or land disposal approaches.

The use of presumptive remedy guidance, if appropriate and applicable to any area of the former Scott Fetzer facility Site, may also provide an immediate focus to the identification and analysis of alternatives. This guidance includes, but is not limited to: Implementing Presumptive Remedies (EPA 540-R-97-029, October 1997). Presumptive remedies involve the use of remedial technologies that have been consistently selected at similar sites or for similar contamination.

A limited number of alternatives, including any identified presumptive remedies, shall be selected for detailed analysis. Each of the alternatives shall be described with enough detail so that the entire treatment process can be understood. Technologies that may apply to the media or source of contamination shall be listed in the RI/FS.

The preliminary list of alternatives to address the Former Scott Fetzer Facility2 Site shall consist of, but is not limited to, treatment technologies (i.e., thermal methods), removal and off-site treatment/disposal, removal and an on-site disposal, and in-place containment for soils, sediments and wastes.

## **5      Detailed Analysis of Alternatives**

Defined alternatives are evaluated against the short- and long-term aspects of three broad criteria: effectiveness, implementability, and cost.

### **5.1      Effectiveness**

The effectiveness of an alternative refers to its ability to meet the objective regarding the scope of the remedial action. The "Effectiveness" discussion for each alternative shall evaluate the degree to which the technology would mitigate threats to public health and the environment. Criteria to be considered include:

#### **5.1.1   Overall Protection of Public Health and the Environment**

How well each alternative protects public health and the environments shall be discussed in a consistent manner. Assessments conducted under other evaluation criteria, including long-term effectiveness and permanence, short-term effectiveness, and compliance with

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ARARs shall be included in the discussion. Any unacceptable short-term impacts shall be identified. The discussion shall focus on how each alternative achieves adequate protection and describe how the alternative will reduce, control, or eliminate risks at the Site through the use of treatment, engineering, or institutional controls.

#### **5.1.2 Compliance with ARARs and Other Criteria, Advisories, and Guidance**

The detailed analysis shall summarize which requirements are applicable or relevant and appropriate to an alternative and describe how the alternative meets those requirements. A summary table may be employed to list potential ARARs. In addition to ARARs, other Federal or State advisories, criteria, or guidance to be considered (TBC) may be identified.

#### **5.1.3 Long-Term Effectiveness and Permanence**

This evaluation assesses the extent and effectiveness of the controls that may be required to manage risk posed by treatment of residuals and/or untreated wastes at the Site. The following components shall be considered for each alternative: magnitude of risk, and, adequacy and reliability of controls.

#### **5.1.4 Reduction of Toxicity, Mobility, or Volume Through Treatment**

Respondent's analysis shall address U.S. EPA's policy of preference for treatment including an evaluation based upon the following subfactors for a particular alternative:

- \* The treatment process(es) employed and the material(s) it will treat
- \* The amount of the hazardous or toxic materials to be destroyed or treated
- \* The degree of reduction expected in toxicity, mobility, or volume
- \* The degree to which treatment will be irreversible
- \* The type and quantity of residuals that will remain after treatment
- \* Whether the alternative will satisfy the preference for treatment

#### **5.1.5 Short-Term Effectiveness**

The short-term effectiveness criterion addresses the effects of the alternative during implementation before the remedial objectives have been met. Alternatives shall also be evaluated with respect to their effects on human health

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and the environment following implementation. The following factors shall be addressed as appropriate for each alternative:

- \* Protection of the Community
- \* Protection of the Workers
- \* Environmental Impacts
- \* Time Until Response Objectives are Achieved

## **5.2 Implementability**

This section is an assessment of the implementability of each alternative in terms of the technical and administrative feasibility and the availability of the goods and services necessary for each alternative's full execution. The following factors shall be considered under this criterion:

### **5.2.1 Technical Feasibility**

The degree of difficulty in constructing and operating the technology; the reliability of the technology, the availability of necessary services and materials; the scheduling aspects of implementing the alternatives during and after implementation; the potential impacts on the local community during construction operation; and the environmental conditions with respect to set-up and construction and operation shall be described. Potential future removal actions shall also be discussed. The ability to monitor the effectiveness of the alternatives may also be described.

### **5.2.2 Administrative Feasibility**

The administrative feasibility factor evaluates those activities needed to coordinate with other offices and agencies. The administrative feasibility of each alternative shall be evaluated, including the need for off-site permits, adherence to applicable non-environmental laws, and concerns of other regulatory agencies. Factors that shall be considered include, but are not limited to, the following: statutory limits, permits and waivers.

### **5.2.3 Availability of Services and Materials**

The RI/FS must determine if off-site treatment, storage, and disposal capacity, equipment, personnel, services and materials, and other resources necessary to

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implement an alternative shall be available in time to maintain the remedial schedule.

#### **5.2.4 State and Community Acceptance**

State and Community Acceptance will be considered by U.S. EPA before a final remedial action is decided upon. Respondent need only mention in the RI/FS that U.S. EPA will consider and address State and community acceptance of an alternative when making a recommendation and in the final selection of the alternative in the ROD.

### **5.3 Cost**

Each alternative shall be evaluated to determine its projected costs. The evaluation should compare each alternative's capital and operation and maintenance costs. The present worth of alternatives should be calculated.

#### **5.3.1 Direct Capital Costs**

Costs for construction, materials, land, transportation, analysis of samples, treatment shall be presented.

#### **5.3.2 Indirect Capital Costs**

Cost for design, legal fees, permits shall be presented.

#### **5.3.3 Long-Term Operation and Maintenance Costs**

Costs for maintenance and long-term monitoring shall be presented.

## **6 Comparative Analysis of Remedial Action Alternatives**

Once remedial action alternatives have been described and individually assessed against the evaluation criteria described in Section 5, above, a comparative analysis shall be conducted to evaluate the relative performance of each alternative in relation to each of the criteria. The purpose of the analysis shall be to identify advantages and disadvantages of each alternative relative to one another so that key trade offs that would affect the remedy selection can be identified.

## **7 Schedule for RI/FS Submission**

Within 60 calendar days following the collection of the last field sample as part of the Remedial Investigation (Task 2), Respondent shall present at a meeting the alternatives to

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undergo a more detailed analysis. A draft RI/FS shall be submitted to U.S. EPA and MDEQ within 180 calendar days following the collection of the last field sample as part of the Remedial Investigation (Task 2). The amended RI/FS, if required, shall be submitted to U.S. EPA and MDEQ within 45 calendar days of the receipt of U.S. EPA's comments on the draft RI/FS.

Following U.S. EPA approval of the RI/FS, U.S. EPA will issue a Proposed Plan to the public wherein U.S. EPA will propose one, or a combination, of the alternatives evaluated in the FS. Public comments will be solicited and evaluated before U.S. EPA makes a final decision on a remediation plan. The final decision will be documented in the ROD for the Former Scott Fetzer Facility Site.

#### **VI. TASK 6: PROGRESS REPORTS**

Respondent shall submit a monthly written progress report to U.S. EPA and MDEQ concerning actions undertaken pursuant to the Order and this SOW, beginning 30 calendar days after the effective date of the Order, until termination of the Order, unless otherwise directed in writing by the RPM. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

#### **SCHEDULE FOR MAJOR DELIVERABLES**

<b>Deliverable</b>	<b>Deadline</b>
TASK 1: Draft RI/FS Work Plan and Sampling Plan	30 calendar days after effective date of Order
TASK 1: Final RI/FS Support Sampling Plan	21 calendar days after receipt of U.S. EPA comments
TASK 3: Draft RI/FS Report	180 calendar days following collection of last field sample as part of RI (Task 2).
TASK 3: Final RI/FS Report	45 calendar days after receipt of U.S. EPA comments on draft RI/FS Report

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TASK 4: Monthly Progress Reports	10th business day of each month (Commencing 30 days after effective date of Order)